



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

MI

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 17 2008

[WAC 02 128 54059]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the California Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's TPS application was initially approved. The approval was subsequently withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed his TPS application during the initial registration period under CIS receipt number WAC 02 128 54059. The director denied the application on August 29, 2003, due to abandonment, determining that the applicant had failed to report for fingerprinting. The applicant filed a motion to reopen on September 20, 2003, stating that he had in fact reported for fingerprinting as scheduled. The director granted the applicant's motion and approved the TPS application on February 19, 2004.

Based upon the Federal Bureau of Investigation's (FBI) fingerprint results report, the director requested that the applicant submit final court dispositions stemming from his arrests in 2003, 2005, and 2006. The Director withdrew the approval of the TPS application on October 2, 2006, because the applicant had failed to submit the requested final court dispositions stemming from his multiple arrests in the State of California.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant submits copies of final court dispositions stemming from his arrests in California.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reveals the following offenses:

- The applicant was arrested on December 27, 2002, case number [REDACTED] in Los Angeles, California, and charged with three counts:
 - Driving under the influence of alcohol and/or drugs, a misdemeanor;
 - Driving under the influence of alcohol, .08 or more weight alcohol, a misdemeanor; and
 - Unlicensed driver, a misdemeanor.

The applicant was convicted on January 22, 2003, of driving under the influence of alcohol, .08 or more weight alcohol, a misdemeanor, and sentenced to 36 months supervised probation. The other two charges were dismissed in the furtherance of justice.

- The applicant was arrested on December 22, 2005, case number [REDACTED], and charged with:
 - Prostitution, a misdemeanor; and,
 - Loitering for Prostitution.

The applicant was convicted on January 20, 2006, of prostitution, a misdemeanor.

The applicant is ineligible for TPS due to his record of at least two or more misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the approval of the TPS application for this reason will be affirmed.

It is noted that the applicant has failed to provide final court dispositions stemming from his arrest by officers of the Norwalk Sheriff's Office, California, on February 21, 2003, on a charge of driving under the influence of alcohol, .08 or more weight alcohol. (Case number [REDACTED]). It is also noted that although the applicant states that the January 24, 2006 case was the continuance of the December 22, 2005 arrest, he has not provided a final court disposition stemming from the January 24, 2006 arrest, which is listed as a separate and distinct arrest by officers of the Sheriff's Office Sacramento, California, on a charge of prostitution. (Case number [REDACTED]).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.